



U.S. ECONOMIC ASSISTANCE PROGRAM IN EGYPT

**CONFORMED
COPY**

USAID Grant Number 263-K-646

GRANT AGREEMENT

BETWEEN

THE ARAB REPUBLIC OF EGYPT

AND THE


UNITED STATES OF AMERICA

FOR THE

PRIVATE SECTOR COMMODITY IMPORT PROGRAM

Dated: 22 JUN 2003

"Certified to be a true copy of the original document signed by Ambassador C. David Welch, and Fayza Aboulnaga, Minister of State for Foreign Affairs."


Mark Driver
Legal Advisor

FUNDS RESERVED

App. 723/41037 Res. No. P030001
LOCC 41000 BPCHE3-03-23263-IG 13
Off. Code S016 Amount \$198,700,000.00
Agent Code Acc. Basis
Oblig. Str. Dt. 06/22/03 Oblig. End Dt. 04/30/2013
By HALA B&AAMINA MACS Date 6/23/03

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USAID Grant No. 263-K-646

GRANT AGREEMENT

For the

PRIVATE SECTOR COMMODITY IMPORT PROGRAM (CIP)

Dated 22 JUN 2003

Between

The Arab Republic of Egypt ("Grantee")

And

The United States of America, acting through the
U.S. Agency for International Development ("USAID").

ARTICLE I: Result.

SECTION 1.1. Result. The Result sought by this Agreement ("Result") is to provide foreign exchange and to encourage commercial banks to lend to Egyptian private Sector for the importation of equipment, intermediate goods and raw materials from the United States in order to support accelerated private sector-led, export-oriented economic growth.

SECTION 1.2. Annex 1, Amplified Description. Annex 1, attached, amplifies the above Result. Within the limits of the above definition of the Result in Section 1.1, Annex 1 may be changed by written agreement of the authorized representatives of the Parties without formal amendment of this Agreement.

ARTICLE II: USAID Contribution.

SECTION 2.1. The Grant.

To help achieve the Result set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant to the Grantee, under the terms of this Agreement, not to exceed One Ninety Eight Million Seven Hundred Thousands United States Dollars (\$198,700,000) (the "Grant").

ARTICLE III: Requirements Precedent to Disbursement

SECTION 3.1. Requirements Precedent. Prior to the disbursement of any proceeds of the Grant, or to the issuance by USAID of documentation pursuant to which disbursement will be made, the Grantee will, except as the parties may otherwise agree in writing, furnish to USAID, in form and substance satisfactory to USAID:

(a) a written statement of the names of the persons holding the offices specified in Section 8.2, and of any additional representatives, together with a specimen signature of each person so designated;

(b) a written statement to the effect that a Special Account has been established in the Central Bank of Egypt to receive proceeds of local currency payments by banks participating in the Program representing the proceeds from repayments of loans by importers importing commodities financed under the Program; and

(c) a written statement to the effect that General Circular No. 1, dated August 8, 2002 is in full force and effect and will apply to the Program, or that a new General Circular acceptable to the Parties, will apply to the Program.

Section 3.2. Notification. When the requirements precedent specified in Section 3.1 have been met, the Grantee will be promptly notified by USAID.

Section 3.3. Terminal Date for Requirements Precedent. If the Requirements Precedent specified in Section 3.1 have not been met within ninety (90) days from the date of this Agreement, or such later date as the Parties may agree to in writing, USAID may terminate this Agreement by written notice to the Grantee.

ARTICLE IV: Procurement, Eligibility, and Utilization of Commodities

Section 4.1. USAID Regulation 1. This Grant and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of USAID Regulation 1 as from time to time amended and in effect, except as the parties may otherwise agree in writing. If any provision of USAID Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

Section 4.2. Eligible Items.

(a) The commodities eligible for financing under this Grant shall be those mutually agreed upon by the Parties and specified

in Implementation Letters issued to the Grantee in accordance with Section 8.1 of this Agreement. Commodity-related services, as defined in USAID Regulation 1, are eligible for financing under this Grant. Eligible Items will be subject to the requirements and Special Provisions of Parts I, II, and III of the USAID Commodity Eligibility Listing which will be transmitted with the first Implementation Letter. Other commodities or services shall become eligible for financing only with the written agreement of the Parties. Any specific commodity or commodity-related service may be excluded from financing under this Agreement if such financing would be inconsistent with the purposes of the Grant or of the Foreign Assistance Act of 1961, as amended, or other legislation governing USAID.

(b) Each Party reserves the right in exceptional situations to delete commodity categories or items within commodity categories described in the Commodity Eligibility Listing. Such right will be exercised at a point in time no later than a commodity prevalidation by USAID (Form 11 approval) or, if no commodity prevalidation is required, no later than the date on which an irrevocable Letter of Credit is issued in favor of the supplier.

(c) The Grantee will be notified through the USAID Mission in the Arab Republic of Egypt of any decision by USAID to exercise its right pursuant to a determination that financing the commodity would adversely affect USAID or foreign policy

objectives of the United States or could jeopardize the safety or health of people in Egypt.

Section 4.3. Procurement Source. All Eligible Items shall have their source and origin in the United States of America (Code 000 of the USAID Geographic Code Book) except as USAID may specify in Implementation Letters, or as it may otherwise agree in writing.

Section 4.4. Eligibility Date. No commodities or commodity-related services may be financed under this Grant if they were procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

Section 4.5. Special Procurement Rules

(a) None of the proceeds of this Grant will be used for financing military requirements of any kind, including the procurement of commodities or commodity-related services for military purposes.

(b) None of the proceeds of this Grant shall be used for the following:

(i) A project or activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

(ii) A project or activity the purpose of which is the

establishment or development in Egypt of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of Egypt would not apply, without the prior written approval of USAID.

(iii) An activity which contributes to the violation of internationally recognized rights of workers in Egypt, including in any designated zone or area in that country.

Section 4.6. Utilization of Commodities.

(a) The Grantee will ensure that commodities financed under this Grant will be effectively used for the purposes for which the assistance is made available. To this end, the Grantee will use its best efforts to ensure that the following procedures are followed:

(i) accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at ports of entry; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded from the vessel at the port of entry, unless the importer is hindered by force majeure or USAID otherwise agrees in writing;

(ii) proper surveillance and supervision are maintained to reduce breakage and pilferage in ports resulting from careless or deliberately improper cargo handling practices, as specified in detail in Implementation Letters; and

(iii) the commodities are consumed or used by the importer not later than one (1) year from the date the

commodities are cleared from the port of arrival in Egypt or fifteen (15) months after arrival in Egypt, whichever occurs first, unless a longer period can be justified to the satisfaction of the Parties by reason of force majeure or special market conditions or other circumstances.

(b) The Grantee will ensure that commodities financed under this Grant will not be reexported unless such commodities have been substantially processed or incorporated into finished goods, unless specifically authorized by agreement of the Parties.

(c) The Grantee shall use its best efforts to prevent the use of commodities financed under this Agreement to promote or assist any project or activity associated with or financed by any country not included in Code 935 of the USAID Geographic Code Book as in effect at the time of such projected use, except with the prior written consent of the Parties.

ARTICLE V: Disbursement

Section 5.1. Date of Disbursement. Disbursement by USAID shall be deemed to occur on the date on which USAID makes a disbursement to the Grantee, or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment or other form of disbursement authorization.

Section 5.2. Letters of Commitment to Banks. After satisfaction of the Requirements Precedent, the Grantee may obtain disbursements of funds under this Grant by submitting Financing Requests to USAID for the issuance of Letters of

Commitment for specified amounts to one or more banking institutions in the United States designated by the Grantee and satisfactory to USAID. Such Letters will commit USAID to reimburse the bank or banks on behalf of the Grantee for payments made by the banks to suppliers or contractors, under Letters of Credit or otherwise, pursuant to such documentation requirements as USAID may prescribe. U.S. banking charges incurred in connection with Letters of Commitment and disbursements shall be for the account of the Grantee and may be financed by this Grant.

Section 5.3. Other Forms of Disbursement Authorizations. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

Section 5.4. Terminal Date for Disbursements. No disbursements of Grant funds shall be made against documentation received by USAID, or any bank described in Section 5.2. after April 30, 2013, except as Parties may otherwise agree in writing.

Section 5.5. Documentation Requirements. USAID Regulation 1 specifies in detail the documents required to substantiate disbursements under this Agreement by Letter of Commitment or other methods of financing. The document number shown on the Letter of Commitment or other disbursing authorization document shall be the number reflected on all disbursement documents submitted to USAID. In addition to the above, the Grantee shall advise importers to maintain records adequate to establish that the commodities financed hereunder have been utilized in accordance with Section 4.6 of this Agreement. Additional

documentation requirements may be set forth in detail in Implementation Letters.

ARTICLE VI: General Covenants

Section 6.1. Taxation and Duties. This Agreement and the Grant funds will be free from any taxation or fees imposed under laws in effect in the Arab Republic of Egypt. No Grant proceeds shall be used to pay taxes, customs duties or other fees applied by Egyptian authorities to commodities funded under this Agreement.

Section 6.2. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant and that Egyptian laws prohibit such payments. USAID and the Grantee shall take action to protect against improper payments by suppliers in connection with this Grant.

Section 6.3. Periodic Discussions. Periodically, but no less than twice annually, the Grantee and USAID will meet to discuss the status of the CIP and associated economic issues.

Section 6.4. Special Account.

(a) Grantee will deposit in the Special Account described in Section 3.1 (b) of this Agreement currency of the Government of the Arab Republic of Egypt in amounts equal to proceeds accruing to the Grantee or any authorized agency thereof as a

result of the importation of the Eligible Items, except as the Parties may otherwise agree in writing.

(b) Funds deposited in the Special Account pursuant to this Agreement may be used for such purposes as are described in the Memorandum of Understanding, as amended from time to time, or as otherwise agreed to by the Parties in writing.

(c) Deposits to the Special Account in local currency will be made in accordance with payment procedures agreed upon in writing by the Parties or described in circulars issued by the representatives of the Grantee named in Section 8.2.

(d) Except as USAID may otherwise agree in writing, the Grantee shall make such deposits to the Special Account at the daily average closing selling rate for transfers as determined and published by the Free Market Central Chamber for the last business day immediately preceding the opening date of the Letter of Credit or the last business day which immediately precedes any increase to an existing Letter of Credit.

(e) The Grantee will maintain, or cause to be maintained in accordance with generally accepted accounting principles, documents in support of deposits to and expenditures from the Special Account. Such documents will be available for review and audit by USAID, or its designees, for the period of the Grant, and up to three years following the last disbursement from the Special Account made in accordance with the provisions of this Agreement. Local currency generated from the Grant will be used to finance audits on the Special Account.

(f) Any unencumbered balances of funds which remain in the Special Account upon termination of the assistance program shall be used for such purposes as may, subject to applicable law, be agreed to between Grantee and USAID.

ARTICLE VII: Suspension, Termination and Refunds

Section 7.1. Suspension and Termination.

(a) Either party may terminate this Agreement in its entirety by giving the other party 30 days' written notice. USAID also may terminate this Agreement in part by giving the Grantee 30 days' written notice, and suspend this Agreement in whole or in part upon giving the Grantee written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving the Grantee written notice, if (i) the Grantee fails to comply with any provision of this Agreement, (ii) an event occurs that USAID determines makes it impossible that the objectives of the program or the assistance program will be attained or that the Grantee will be able to perform its obligations under this Agreement, or (iii) any disbursement by USAID would be in violation of the legislation governing USAID.

(b) Except for payment which the parties are committed to make pursuant to noncancellable commitments entered into with third parties prior to such suspension or termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the parties to provide financial or

other resources to the program, or to the suspended or terminated portion of the program, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.

(c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under the Grant, or under the applicable portion of the Grant, be transferred to USAID if the goods are from a source outside the Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of Grantee's country.

Section 7.2. Cancellation by USAID. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 7.1., the cause or causes thereof have not been corrected, USAID may cancel any part of the Grant that is not then disbursed or irrevocably committed to third parties.

Section 7.3. Refunds.

(a) In addition to any refund otherwise required by USAID pursuant to USAID Regulation 1, if USAID determines that any disbursement is not made or used in accordance with this Agreement or is in violation of United States law, USAID may require the Grantee to refund the amount of such disbursement in U.S. dollars to USAID within thirty (30) days after receipt of request therefor. Refunds paid by the Grantee to USAID resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of USAID's obligation

under the Agreement and shall be available for reuse under the Agreement if authorized by USAID in writing.

(b) The right to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

Section 7.4. Nonwaiver of Remedies. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to USAID under this Agreement will be construed as a waiver of such rights, powers or remedies.

ARTICLE VIII: Miscellaneous

Section 8.1. Implementation Letters. From time to time, for the information and guidance of the Parties, USAID will issue Implementation Letters setting forth program details and describing the procedures applicable to the implementation of this Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters will not be used to amend or modify the text of this Agreement.

Section 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding the office of, or acting as, Minister of State for Foreign Affairs and/or the Administrator of the Department for Economic Cooperation with U.S.A., and USAID will be represented by the individual holding the office of, or acting as, Mission Director, USAID, Cairo, Egypt, each of whom, by written notice,

may designate additional representatives. The names of the representatives of the Grantee, with specimen signatures, will be provided to USAID, which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 8.3. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram, cable or fax, and will be deemed duly given or sent when delivered to such Party at the following addresses:

To the Grantee:

Mail Address: Ministry of Foreign Affairs
International Cooperation Sector
Department for Economic Cooperation
with the U.S.
48-50 Abdel Khalik Tharwat Street
5th Floor
Cairo, Egypt

To USAID:

Mail Address: USAID
Plot 1/A, off El-Lasaelki Street
New Maadi, Postal Code 11435
Cairo, Egypt

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

Section 8.4. Information and Marking. The Grantee will give appropriate publicity to the Grant as a program to which the United States had contributed. Goods financed by USAID will be marked as described in Implementation Letters.

Section 8.5. Language of Agreement. This Agreement is prepared in both English and Arabic. In the event of ambiguity or conflict between the two versions, the English language version shall prevail.

Section 8.6. Ratification. The Grantee will take all necessary action to complete all legal procedures necessary to ratification of this Agreement, and will notify USAID as promptly as possible of the fact of such ratification.

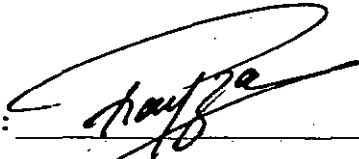
Section 8.7. Effective Date. This Agreement shall enter into force when signed by both Parties hereto.

IN WITNESS WHEREOF, the Grantee and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

ARAB REPUBLIC OF EGYPT

UNITED STATES OF AMERICA

BY



NAME : Fayza Aboulnaga

TITLE: Minister of State for Foreign Affairs

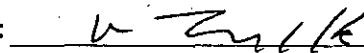
BY



NAME : C. David Welch

TITLE: Ambassador

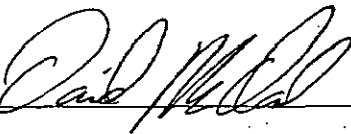
BY



NAME : Mohamed Tawfik

TITLE: Director of the Cabinet of the Minister of State for Foreign Affairs

BY



NAME : David McCloud

TITLE: Acting Director, USAID/Egypt

ANNEX 1

ACTIVITY DESCRIPTION

The direct result of the Commodity Import Program (CIP) is the importation of equipment, intermediate goods and raw materials from the United States. The program achieves this by providing foreign exchange and by encouraging commercial banks to provide credit to Egyptian private sector importers. The program is an integral component of USAID/Egypt's development strategy, which encourages greater use of private sector mechanisms to deliver U.S. economic assistance resources. This program supports the Mission's current Strategic Objective No. 16, *"Environment for trade and investment strengthened."* The CIP is designed to provide attractive short to medium-term financing terms to Egyptian private sector companies that import products from the United States.

The Commodity Import Program is a continuation of previous commodity import programs that began in Egypt in 1986.

USAID's Egyptian counterpart agency is the Ministry of Foreign Affairs (MFA) and the primary implementing agents for the program are selected local Egyptian banks. The local Egyptian participating banks bear primary implementation responsibility for the program and act in accordance with the rules and procedures set forth in a General Circular which is issued and periodically amended by MFA with the concurrence of USAID. The individual banks process and approve transactions in accordance with USAID regulations and the General Circular. USAID reviews all bank approved transactions. A participating bank, after approving a transaction and receiving USAID concurrence, will issue an irrevocable Letter of Credit (L/C) in favor of the U.S. supplier. The participating local banks assume a liability to the Government of Egypt (GOE) special account for the principal amount of each approved transaction at the time the L/C is opened. Thus, each bank assumes the credit risk on behalf of its clients. Full principal and the specified amount of interest collected by the banks is paid into a GOE special account as set forth in the General Circular. Under the program, importers pay off their currency loans and the participant banks deposit these repayments in the special account with the Central Bank of Egypt. Typical uses of local currency reflows include general budget support to the GOE, sector budget support to individual Ministries or Agencies of the GOE and other miscellaneous uses.